

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ELMER WILLIAMS  
PETITIONER

CA. NO. 05-115 ERLE

V.

( SUSAN R. BAXTER )  
U.S.M.J

FRANKLIN TENNIS  
RESPONDENT

PETITIONERS MOTION TO VOLUNTARILY  
WITHDRAW HIS PETITION FOR A WRIT  
OF HABEAS CORPUS

PETITIONER, ELMER WILLIAMS, PRO SE, RESPECTFULLY  
MOVES THIS HONORABLE COURT TO ALLOW HIM TO VOLUNTARILY  
WITHDRAW HIS PETITION FOR A WRIT OF HABEAS CORPUS  
AND REPRESENTS:

1. ON APRIL 14, 2005, PETITIONER FILED A PETITION FOR  
A WRIT OF HABEAS CORPUS IN THE U.S. DISTRICT  
COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
2. ON APRIL 21, 2005, THE HONORABLE MAGISTRATE JUDGE

SUSAN P. BAXTER ISSUED AN ORDER FOR THE U.S. MARSHALLS TO ISSUE PROCESS UPON THE RESPONDENT, ERIE COUNTY DISTRICT ATTORNEY AND THE ATTORNEY GENERAL OF PENNSYLVANIA.

3. THE HON. MAGISTRATE JUDGE BAXTER FURTHER ORDERED THE ABOVE PARTIES TO RESPOND TO THE ALLEGATIONS OF THE PETITION FOR A WRIT OF HABEAS CORPUS WITHIN TWENTY (20) OF THE SERVICE OF THE COURTS ORDER.
4. AS OF THIS DATE FILING, THE RESPONDENT NOR THE DISTRICT ATTORNEY HAS SERVED A RESPONSE UPON PETITIONER
5. ON JULY 14, 2005, FRANCIS FILIPPI, SENIOR DEPUTY ATTORNEY GENERAL SENT CORRESPONDENCE TO ERIE COUNTY DISTRICT ATTORNEY, BRAD FOULK INFORMING OF FEDERAL PROCEDURE RULES REQUIRING AN ANSWER TO THE PETITION FOR WRIT OF HABEAS CORPUS.
6. PETITIONER, AFTER CONDUCTING EXTENSIVE RESEARCH HAS DISCOVERED THIS COURT LACKS JURISDICTION TO HEAR HIS PETITION FOR A WRIT OF HABEAS CORPUS DUE TO A PROCEDURAL DEFAULT.

7. PURSUANT TO 28 USC 2254, PROVIDES IN PERTINENT PART:

(b)(1) " AN APPLICATION FOR A WRIT OF HABEAS CORPUS ON BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGEMENT OF A STATE COURT SHALL NOT BE GRANTED UNLESS IT APPEARS THAT -

(A) THE APPLICANT HAS EXHAUSTED THE REMEDIES AVAILABLE IN THE COURTS OF THE STATE ...

8. PETITIONER HAS NOT EXHAUSTED HIS AVAILABLE STATE REMEDIES BECAUSE HE HAS NOT RECEIVED DISPOSITION OF HIS PENDING APPEAL IN PA. SUPERIOR COURT AND HAS NOT APPEALED TO THE PA SUPREME COURT WHICH WOULD FINALIZE HIS EXHAUSTION REQUIREMENT.

9. IN THE INTERESTS OF JUDICIAL ECONOMY, AND TO PRESERVE HIS APPEAL RIGHTS TO FILE ANY POSSIBLE FUTURE PETITIONS WHEN RIFE FOR CONSIDERATION BY THIS HONORABLE COURT, PETITIONER RESPECTFULLY REQUESTS HE BE PERMITTED TO VOLUNTARILY WITHDRAW HIS CURRENT PETITION FOR A WRIT OF HABEAS CORPUS PRESENTLY BEFORE THE COURT.

10. PETITIONER PRESERVES AND DOES NOT WAIVER ANY LEGAL CLAIMS WITHIN HIS PETITION AS A RESULT OF HIS VOLUNTARY WITHDRAWAL. THE COURT HAS NOT DECIDED ON THE MERITS

OF HIS PETITION FOR A WRIT OF HABEAS CORPUS.

WHEREFORE, BASED UPON THE FOREGOING, AS A MATTER OF LAW, PETITIONER RESPECTFULLY REQUESTS THIS HONORABLE COURT ISSUE AN ORDER ACKNOWLEDGING PETITIONER HAS VOLUNTARILY WITHDRAWN HIS PETITION FOR A WRIT OF HABEAS CORPUS.

RESPECTFULLY SUBMITTED.

Elmer Williams

ELMER WILLIAMS FR6976

SCI ROCKVIEW

Box A.

BELLEfonte, PA. 16823

MTE: 9-21-05

## CERTIFICATE OF SERVICE

I, ELMER WILLIAMS, HEREBY CERTIFY THAT I HAVE THIS 21 DAY OF September 2005, SERVED A TRUE AND CORRECT COPY OF THE FOREGOING MOTION TO WITHDRAW PETITION FOR A WRIT OF HABEAS CORPUS TO THE PERSON AND IN THE MANNER INDICATED BELOW BY PLACING THE SAME IN THE LEGAL MAILBOX AT SCI ROCKVIEW, PA, ADDRESSED AS FOLLOWS

U.S. MAIL, FIRST CLASS, POSTAGE PREPAID.

BRAD FOULK, DISTRICT ATTORNEY  
ERIE COUNTY COURTHOUSE  
140 W. 6th ST  
ERIE, PA. 16501-1030

Elmer Williams  
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